

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director
and Attorney-in-Chief

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

November 24, 2020

VIA ECF

Honorable Gregory H. Woods
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Ethan Melzer,
20 Cr 314 (GHW)

Dear Judge Woods:

I write in response to the Court's order dated November 17, 2020 (*See* Dkt. No. 40). Please find attached the requested supplemental declaration of Jeffrey Martin which describes more fully the source of data used for his conclusions and the methodology used to reach those conclusions.¹

Respectfully submitted,
/s/
Jennifer E. Willis
Jonathan Marvinny
Assistant Federal Defender

(212) 417-8743 / (917) 572-5792

Cc: AUSA Matthew Hellman

¹ The supplemental declaration references the specific Bates stamp pages on which relevant data was located. A digital copy of the Bates stamp records produced by the Jury Administrator can be provided to the Court upon request.

SUPPLEMENTAL DECLARATION OF JEFFREY MARTIN

The undersigned, Jeffrey Martin, declares as follows:

1. I have previously supplied a declaration in this case dated November 13th, 2020 and have been asked by counsel to supplement the declaration. This supplemental declaration will cite Bates stamps of the documents supplied by the Jury Administrator and supply more detailed descriptions of the methods of analysis I employed. The information used that is not Bates stamped is publicly available.
2. To the extent that I can explain or provide more detail to specific areas, I would be pleased to help.

SOURCES OF DATA

3. The census numbers used for the jury eligible population as first described in paragraph 16 of my original declaration are from the United States Census Bureau and are available at the Bureau's website <https://data.census.gov/cedsci/>. The numbers used are from the 2018 American Community Survey 5 Year Average. The easiest way to access these numbers is in Table B05003 and Tables B05003 A through I for the jury eligible population. On those tables, the jury eligible population is made up of persons age 18 and above who are also citizens of the United States.
4. The voter registration lists referenced starting in paragraph 22 of my original declaration are Bates stamped as follows. Bronx County is stamped SDNY_JA_000001 BronxCounty.xlsx, Dutchess County SDNY_JA_000002 DutchessCounty.xlsx, New York County SDNY_JA_000749 ManhattanCounty.xlsx, Orange County SDNY_JA_000750 OrangeCounty.xlsx, Putnam County SDNY_JA_000751 PutnamCounty.xlsx, Rockland County SDNY_JA_000753 RocklandCounty.xlsx, Sullivan County SDNY_JA_000754 SullivanCounty.xlsx, and Westchester County SDNY_JA_000755 WestchesterCounty.xlsx.
5. The Master Jury Wheel for the Southern District of New York's White Plains Division as first described in paragraph 27 of my original declaration is stamped SDNY_JA_000757 JMS Wheel 5 WP.xlsx.
6. The Qualified Jury Wheel for the Southern District of New York's White Plains Division as first described in paragraph 27 of my original declaration is stamped SDNY_JA_000759 Qualified JMS Wheel 5 WP.xlsx.
7. The basis for geocoding as first described in paragraph 28 of my original declaration is the United States Census Bureau's 2018 American Community Survey 5 Year Average by ZCTA5 for Table B05003 and Tables B05003 A through I for the jury eligible population. ZCTA5 is the 5 digit zip used by United States Census Bureau. The tables are available at the United States Census Bureau's website at <https://data.census.gov/cedsci/>. The method of geocoding is described below.
8. The New York State Board of Elections posts the report titled NYSVoter Enrollment by County, Party Affiliation and Status Voters Registered as of November 1, 2016 on the

website at

https://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov16.pdf. This report is described in paragraph 31 of my original declaration.

9. The proration of counties as described in paragraph 33 of my original declaration is stamped as SDNY_JA_000126-000127 Item 12 Calculation of the Div.pdf.
10. The single age population numbers as described in paragraph 49 of my original declaration and numbers for persons moving in the last year as described in paragraph 52 of my original declaration are from the United States Census Bureau's American Community Survey Public Use Microdata Sample (PUMS). The PUMS is standardly used for analysis of population groups with multiple characteristics such as geography, age, citizenship status, and mobility where the United States Census Bureau does not supply a specific table. The 2018 American Community Survey 5 Year Average Public Use Microdata Sample can be found at <https://www2.census.gov/programs-surveys/acs/data/pums/2018/5-Year/>. The data file for the State of New York is named csv_pny.zip. Fields in the PUMS are described in the 2014-2018 ACS PUMS Data Dictionary which can be found at https://www2.census.gov/programs-surveys/acs/tech_docs/pums/data_dict/PUMS_Data_Dictionary_2014-2018.pdf. The following public use microdata area codes or PUMA codes are used for the Southern District of New York's White Plains Division; 2701, 2702, 2801, 2802, 2901, 2902, 2903, 3001, 3002, 3003, 3101, 3102, 3103, 3104, 3105, 3106, and 3107. The jury eligible population requires the use of the age or AGE code and the citizen status code or CIT code. Mobility analysis requires the use of the mobility status or MIG code.
11. Form AO-12 for the Southern District of New York's White Plains Division as described in paragraph 53 of my original declaration is stamped SDNY_JA_000003-000006 Item 4 Narrative AO 12 Report on the Operation of the Jury Selection Plan.pdf.
12. The response from the Jury Clerk about follow up with qualification forms where there is no response as described in paragraph 89 of my original declaration is stamped SDNY_JA_000128-000128 Item 13 Narrative Do Not Respond Undeliverable.pdf.

METHODS OF ANALYSIS

13. As described in paragraph 28 of my original declaration, geocoding is the standard method of estimating the demographics of a group of persons whose demographics are unknown based on the weighted demographic percentages of jury eligible persons in each zip code. This analysis uses the United States Census Bureau's 2018 American Community Survey 5 Year Average based on 5 digit zip code or ZCTA5 and Table B05003 and Tables B05003 A through I.
14. As described in paragraph 58 of my original declaration, Absolute Disparity is a standard measure of representativeness of a group and is the arithmetic difference between the percentage of a distinctive group on the jury list and the percentage of the same distinctive group in the population.

15. As described in paragraph 65 of my original declaration, Comparative Disparity is a standard measure of representativeness of a group and is by formula the Absolute Disparity for a cognizable group divided by the population percentage of that cognizable group.
16. As described in paragraph 73 of my original declaration, Standard Deviation analysis is a standard measure of representativeness of a group. The number of standard deviations from expected in this analysis is calculated as the size of the group in a list less the group's percentage in the population times the size of the entire list divided by the square root of the following three numbers multiplied; the size of the list, the percentage of the group in the population, and the percentage of the rest of the groups in the population.
17. The systematic factors of under representation as described starting at paragraph 76 of my original declaration details the step by step process that leads from the jury eligible population to the Qualified Jury Wheel. In each step, a determination is made as to whether each step causes under representation of Black or African-American persons and Hispanic or Latino persons by comparing the demographic results before and after the step. To the extent that self reported census numbers or self reported demographic information from the Form AO-12 or data files is available the self reported information is used. If no such self reported information is available, geocoded estimates of the demographic information is used.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated this 20th day of November 2020



Jeffrey Martin